Public Prosecutor v Razak Basuni & Ors

HIGH COURT (KUCHING) — CRIMINAL TRIAL NO 45–02 OF 2002-II
LAU BEE LAN J
28 MARCH 2005

Criminal Procedure — Sentence — Culpable homicide not amounting to murder — Plea of guilty — Gravity of offence — Whether degree of culpability of accused should be taken into account — Whether credit can be given for plea of guilty — Whether absconding from crime scene was not in favour of accused

The first, second and third accused were charged with the offence of murder for causing the death of one Ibrahim Saldy. Subsequent to representations made to the senior federal counsel, an alternative charge for culpable homicide not amounting to murder under the first limb of s 304 of the Penal Code was preferred against all the three accused who then pleaded guilty to the alternative charge. In mitigation, the counsels for the three accused persons seeking for leniency in the sentencing submitted, inter alia, the accused persons had pleaded guilty and by doing so had saved the court's time and inconvenience to the witnesses. Counsel for the first and third accused also submitted that first and third accused did not physically do anything save to be present together with the second accused when the unfortunate incident happened. On the other hand, the deputy public prosecutor urged the court to impose a deterrent sentence citing public interest in view of the gravity and seriousness of the offence committed by the three accused and prevalence of murder offences in the state.

Held, sentencing the first, second and third accused to 10 years, 11 years and 10 years imprisonment respectively:

(1) It cannot be denied that the second accused was the person who kicked and stabbed the deceased. The court took cognisance of the fact that s34 of the Penal Code operates and that was why the first and third accused were equally culpable but in reality, they did not physically do anything save to be present together with the second accused when the unfortunate incident happened. Therefore, it would be justified in the circumstances of the case for the court to consider the degree of culpability of the accused persons (see paras 22–23).

(2) The three accused had pleaded guilty to the alternative charge saving much judicial time and expenses which would have to be incurred if a trial had proceeded and credit should be given to this factor following *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 (see para 24).

(3) The facts of the case showed that when the two policemen arrived at the 7th floor of the Supreme Hotel and saw the three accused in front of the lift door behaving in a suspicious manner and thereafter the three accused attempted to escape, the court was of the view that the conduct of the three accused in absconding soon after the commission of the offence cannot be construed as a factor in their favour (see para 27).

[**Bahasa Malaysia summary**

Tertuduh pertama, kedua dan ketiga dituduh atas kesalahan membunuh kerana menyebabkan kematian Ibrahim Saldy. Berikutan representasi-representasi yang dibuat kepada peguam kanan persekutuan, satu pertuduhan alternatif kerana mematikan orang dengan salah yang tidak terjumlah kepada kesalahan membunuh di bawah cabang pertama s 304 Kanun Keseksaan dibuat terhadap kesemua tiga tertuduh yang kemudiannya mengaku bersalah kepada pertuduhan alternatif itu. Dalam mitigasi, peguam-peguam bagi pihak ketiga-tiga tertuduh memohon peringanan dalam menjatuhkan hukuman dan berhujah, antara lain, tertuduh-tertuduh telah mengaku bersalah dan dengan berbuat demikian telah menjimatkan masa mahkamah dan mengelakkan sebarang kesulitan kepada saksi-saksi. Peguam-peguam bagi pihak tertuduh pertama dan ketiga juga berhujah bahawa tertuduh pertama dan ketiga tidak secara fizikal melakukan apa-apa kecuali hadir bersama tertuduh kedua semasa kejadian yang tidak diingini itu berlaku. Sebaliknya, timbalan pendakwa raya mendesak mahkamah untuk mengenakan satu hukuman yang merupakan langkah pencegahan dengan mengambilkira kepentingan awam berdasarkan keseriusan kesalahan yang dilakukan oleh ketiga-tiga tertuduh dan kekerapan berlakunya kesalahan membunuh dalam negeri.

Diputuskan, menjatuhkan hukuman 10 tahun, 11 tahun dan 10 tahun penjara ke atas tertuduh pertama, kedua dan ketiga masing-masing:

(1) Ia tidak boleh dinafikan bahawa tertuduh kedualah yang menyepak dan menikam si mati. Mahkamah mengambilkira fakta bahawa s 34 Kanun Keseksaan terpakai dan itu sebabnya tertuduh pertama dan ketiga sama-sama bersalah tetapi secara realiti, mereka tidak berbuat apa-apa kecuali hadir bersama dengan tertuduh kedua semasa kejadian yang tidak diingini itu berlaku. Oleh itu, adalah dijustifikasikan dalam keadaan kes tersebut untuk mahkamah menimbangkan tahap kesalahan tertuduh-tertuduh berikut (lihat perenggan 22–23).

(2) Ketiga-tiga tertuduh telah mengaku bersalah terhadap pertuduhan alternatif dan menjimatkan masa dan perbelanjaan kehakiman yang mungkin perlu ditanggung jika satu perbicaraan diteruskan dan kredit patut diberikan kepada faktor ini mengikut *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 (lihat perenggan 24).

(3) Fakta kes menunjukkan bahawa apabila dua polis tiba di tingkat 7 Hotel Supreme dan melihat ketiga-tiga tertuduh di depan pintu lif berkelakuan mencurigakan dan kemudiannya ketiga-tiga tertuduh telah cuba melarikan diri, mahkamah berpendapat bahawa kelakuan ketiga-tiga tertuduh yang melarikan diri sejurus selepas berlakunya kesalahan itu tidak boleh ditafsirkan sebagai satu faktor yang menyebelahi mereka (lihat perenggan 27).]

Notes

For a case on culpable homicide not amounting to murder, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) para 3341.

Cases referred to

Chandra Sekaran a/l Ramiyah & Anor v PP [2000] 3 MLJ 649 (refd)
Christopher Khoo Ewe Cheng v PP [1998] 3 MLJ 881 (refd)
Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167 (folld)
PP v Chia Leong Foo [2000] 6 MLJ 705 (refd)
PP v Chot Saik Kam [1991] 1 MLJ 193 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
PP v Mohd Nooh bin Yusof & Ors [1993] 3 MLJU 271 (refd)
PP v Nasir Malik [1995] 1 LNS 196 (refd)
PP v Pujiono bin Kara San & Ors [2003] 5 MLJ 475 (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45 (refd)
PP v Reza Mohd Shah bin Ahmad Shah [2002] 4 MLJ 13 (refd)
PP v Tay Chuan Beng [1989] 1 MLJ 403 (refd)
PP v Thomas Tampang & Anor (MT Sibu 47–1–2003) (unreported) (refd)
Ralon Banas v PP [2000] 3 CLJ 310 (refd)
Tham Kai Yau & Ors v PP [1997] 1 MLJ 174 (refd)
Vinaga Moorthy Gopal v PP [2003] 1 CLJ 758 (refd)

Legislation referred to

Penal Code ss 34,302, 304(1)(a)

Shahrizal Shaari (Deputy Public Prosecutor) for the prosecution.
Anthony Tai (Anthony Tai Advocates) for the first accused.
Detta Samen (Detta Samen Co) for the second accused.
Bexter Michael (Ee & Lim Advocates) for the third accused.

Lau Bee Lan J:

[1] On 3 July 2002, the first, second and third accused, Razak Basuni, Darwis Ahmat and Handoko Amin respectively were first charged with the offence of murder which reads:

That you all, on the 1st day of October, 2001 at about 10pm, in room No 709, Supreme Hotel, Ban Hock Road, in the District of Kuching, in the State of Sarawak in furtherance of common intention of you all, committed murder, by causing the death of IBRAHIM SALDY (M) and thereby committed an offence punishable under s 302 Penal Code, read with s 34 of the same Code.

[2] On 14 April 2003, the assigned counsel of the three accused persons informed the court that they wished to make some representations to the senior federal counsel. Thereafter after a lapse of time, on 21 March 2005, the prosecution intimated to the court that they would be preferring an alternative charge under the first lime of s 304 of the Penal Code against the three accused persons. The three accused persons claimed trial to the original charge and pleaded guilty to the alternative charge as follows:

That you all, on the 1st day of October 2001 at about 10pm in room No 709, Supreme Hotel, Ban Hock Road, in the District of Kuching, in the State of Sarawak, in furtherance of common intention of you all, committed culpable homicide not amounting to murder, by causing the death of IBRAHIM SALDY (M), and thereby committed an offence punishable under s 304(a) of the Penal Code, read with s 34 of the same Code.

[3] The three accused persons were told of the implications of their plea of guilty in that the punishment provided by the law, ie, imprisonment for a term which may extend to 20 years and that the court has the discretion to impose a fine. The three accused understood the nature and consequences of their plea and still maintain plea of guilty to the alternative charge.

[4] The three accused persons admitted to the following exhibits tendered by the learned DPP, Shahrizal Shaari:

(a) written facts of case — exh A.

(b) Padungan Police Report 2834/2001 — exh B 25.

(c) Padungan Police Report 2835/2001 — exh C.

(d) rough sketch plan of scene — exh D.

(e) sketch plan of Room 709, Supreme Hotel — exh E and key to the sketch plan — exh E1 respectively.

(f) post-mortem report/autopsy report of the deceased, Ibrahim Saldy — exh F.

(g) five photographs of the deceased (during post-mortem) — exh G (i) to (v) and five negatives — exh GN (i) to (v) respectively.

[5] As for the knife, the second accused admitted that it was used to stab the deceased whilst the first accused said that he did not know the knife and the third accused said that it is not the knife. Bearing in mind that the alternative charge is one of s 304(1)(a) of the Penal Code read with s 34 of the

same Code, which states, 'When a criminal act is done by several persons, in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if the act was done by him alone', the court marked the knife as exh H.

[6] With respect to the four photographs of the deceased and the two photographs taken in Room 709, the learned DPP informed the court that they would not be tendering them as exhibit since the negatives are not available (apparently, they were still with the investigation officer who had since retired) and the defence had conceded that they would not object to the non-admission since there was no dispute as to the identity of the deceased and that he was stabbed. On this point, I do not think there would be need for a further adjournment as the facts are clear.

[7] After the court found each of the three accused persons guilty on the alternative charge and convicted them accordingly, the assigned counsel for the first, second and third accused, Mr Anthony Tai, Mr Detta Samen and MrBexter Michasel mitigated on their behalf.

[8] Mr Tai submitted that the court should be guided by certain principles of sentencing, ie by looking at the particular circumstances of the accused persons, the circumstances under which the offence was committed, whether or not there were aggravating factors and cases of similar nature so that the appropriate sentence be passed. In support, Mr Tai cited the case of *Public Prosecutor v Mohd Nooh bin Yusof & Ors* [1993] 3 MLJU 271 and *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45. Learned counsel drew the court's attention to headnote (1), (2) and (3) of *Ravindran*'s case which reads:

> (1) Section 304 of the Penal Code (FMS Cap 45) gave the court a wide discretion to determine the term of imprisonment. However, the court must act judiciously and in accordance with the relevant sentencing practice in determining the sentence to be imposed. An important aspect of sentencing was the public interest.
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> (2) The court should also have regard to certain accepted principles or guidelines so as not to have too great a disparity in sentence for the same offence. These guidelines were discount or credit for the plea of guilty; comparison of sentences in other courts in other cases for a similar offence; disparity of sentence amongst accused persons and mitigating factors relevant to the present case.
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> (3) It is an accepted rule of practice that an accused should be given credit or discount for pleading guilty. This is because public time and money will be spared if an accused admits his guilt. The credit or discount to be given to an accused person is not on the maximum sentence imposed by law but rather on a sentence which would have been imposed on the accused if he had claimed trial and been found guilty .

[9] In mitigation Mr Tai stated:

> First accused is now 26 years of age. He is married and has one child, baby boy, four years of age. He has not seen the child since date of remand, ie 2 October 2001 and to date he has been remanded for three years and five months.

First accused entered Sarawak through legal means, ie with proper travel documents. First entry into Sarawak was in the year 2000 and during that visit he went to Bintulu to visit his sister. His sister is married to a local Iban. He spent three days in Bintulu and while at Bintulu, his brother-in-law promised to help him obtain a job in Bintulu as a logger. Because he did not have the proper work permit, he has to go back to Indonesia to get all this done. On his second visit to Sarawak, he was asked by his brother-in-law to come to Kuching and to wait for his brother-in-law in Kuching. He travelled to Kuching from Pontianak by bas and it was in the bus that he befriended accused No 2 and 3. He did not know accused No 2 and 3 previous to the occasion. The three of them took a taxi to Supreme Hotel and upon arrival at Supreme Hotel he registered himself under his own name using his international travel document. The fact that he had registered himself at the hotel would refute any suggestion or suspicion that he was therefor any illegal activities.

The first accused is a first offender. He has a father and mother to support in Indonesia. According to the Prisons Department, his conduct is good.

First accused has pleaded guilty to the offence and this fact has saved us considerable time and expense which would otherwise be involved if he had claimed trial under s 302.

Rampancy of the offence is not relevant, it is not premeditated, but it is perpetrated in the heat of the moment during a quarrel.

It would appear that general trend would be to impose 8 to 10 years for cases where the accused person pleads guilt to offence under s 304(a) of the Penal Code.

The court can to a certain extent decide on the degree of culpability on the facts of the case, the role played by the respective persons in this case and the court can or would be justified to impose different sentences for each of the accused persons.

According to the facts of the case is that he played no role in the demise of the victim. What have happened according to the facts of the case must have happened very quickly and suddenly and he was there at the wrong time and wrong place. I would urge this honourable court to take this factor into consideration on passing sentence on him.

Looking at facts of case and at autopsy report there is nothing to show that the act was done in a cruel manner which can be gauged from the injuries and there are no aggravating factors in this case.

Urge court to consider the length of time the accused has spent in prison and in passing sentence to backdate from the time of arrest.

[10] Mr Detta Samen on behalf of the second accused submitted:

[2nd Accused was] 33 years of age. He is a married man having 2 wives and 3 children.

Prior to this incident, second accused was an odd job labourer, studied up to primary level only. Apart from his two wives and three children, he has to take care of his aged mother.

On day of incident, 1 October 2001, second accused had just arrived in Kuching from Pontianak. He was arrested by police on the same day and he was under remand till today. He came to Kuching with the sole objective of looking for a job to enable him to support his two wives, three children and his aged mother.

Second accused is a first offender and that his conduct in prison during the remand period is good. What happened on 1 October 2001 in Room 709, Supreme Hotel was never premeditated but at the spur of the moment which resulted in the unfortunate incident.

[11] In terms of the law, Mr Detta Samen had also referred the court to *Ravindran*'s case wherein his Lordship, Visu Sinnadurai J had in the course of his judgment referred to *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 wherein the Supreme Court had adopted with approval the views expressed by Cumming-Bruce LJ in *R v Boyd* where at p 170, para I, right-hand column to p 171, para A left-hand column, his Lordship said:

For determining the length of custodial sentence in pleading guilty cases the test to be adopted could be found in *R v Boyd* where Cumming-Bruce LJ said: 'The policy of the courts is that where a man does plead guilty, which does give rise to public advantage and avoids the expense and nuisance of a trial, which may sometimes be a long one, the court encourages pleas of guilty by knocking something off the sentence which would have been imposed if there had not been a plea of guilty. So one asks oneself, if there had been a plea of not guilty, and he had been convicted, what would have been the appropriate sentence?

[12] In *Abdullah Ang*'s case, the Supreme Court also held at p 171, para D, left-hand column, 'It is generally accepted that the extent of the reduction on account of a plea of guilty would be between one-quarter and one-third of what otherwise would have been the sentence.'

[13] Mr Detta Samen had drawn the court's attention to the two Singapore cases of *Public Prosecutor v Chot Saik Kam* [1991] 1 MLJ 193 and *Public Prosecutor v Tay Chuan Beng* [1989] 1 MLJ 403 wherein the High Court imposed 10 and 8 years imprisonment respectively when the accused and the two accused persons pleaded guilty for a offence under section 304 of the Singapore Penal Code. He further referred to the Federal Court case of *Tham Kai Yau & Ors v Public Prosecutor* [1997] 1 MLJ 174 where the accused had pleaded not guilty to a charge of murder and was subsequently found guilty under the first limb of s 304 and was imposed 10 years' imprisonment.

[14] Mr Bexter Michael in mitigation pleaded:

The third accused was 30 years old at the time of the offence. Prior to this arrest, the third accused worked at a food stall assisting his father. He was married and has a son then aged two. Both his wife and son are dependent on him as the breadwinner. His son is now five years old and attending kindergarten. He has not seen his son for the past three and a half years since he has been under remand. His wife was unemployed and I was instructed that she passed away on 27 November 2004.

The third accused was deeply grieved and is still now is because his wife passed away when he was in custody and he could not be with his wife at such a time.

On the day of the incident, the third accused planned to go to Kuching to look for a job. At the bus terminal in Pontianak, Indonesia, he met the first and second accused. He has never met them before that. So after some discussion, he agreed to board a bus together with them because the first accused said that he might be able to get a job for the third accused in Bintulu because he has a brother-in-law in Bintulu who was running a sawmill. So the third accused has not met or seen the deceased prior to the date of the incident. The fact that he had never met the first and second accused prior to the incident nor the deceased prior to the incident would refute any suggestion that the commission of the offence was premeditated. The facts show that there was no crime deliberately planned in minute detail; it occurred on the spur of the moment. From the facts of the case, it was the second accused and only he that caused the death of the deceased.

The third accused has pleaded guilty and by doing has saved the court's time and inconvenience to the witnesses.

The third accused is a first offender and he had co-operated with the police during the course of investigation and his conduct whilst under remand is said to be satisfactory.

[15] With respect to the law, Mr Bexter Michael associated with the cases submitted by Mr Tai. In addition he cited the case of *Public Prosecutor v Pujiono bin Kara San & Ors* [2003] 5 MLJ 475 wherein three accused persons were similarly charged and convicted for committing the alternative charge under s 304(a) of the Penal Code read with s 34 of the same Code and on their pleading guilty were sentenced to 11, 9 and 10 years of imprisonment respectively after the court took into account their respective roles and discount for the plea of guilt.

[16] In his submission, the learned DPP urged the court to consider:

(1) imposing a deterrent sentence in view of the gravity and seriousness of the offence committed by the three accused persons as is reflected in the punishment provided under the law;

(2) public interest citing *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256;

(3) to take judicial notice of the prevalence of murder offences in the state;

(4) nature and circumstances of the case, ie although the stabbing was committed by the second accused, all the three accused committed the act in furtherance of common intention and in law s 34 of the Penal Code provides that 'When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.' The learned DPP submitted that the common intention developed on the spot after the quarrel. Further, he submitted there was no

evidence to show that the deceased had provoked all the accused to the extent of being stabbed by them but instead the deceased was being stabbed by the second accused when he tried to settle the quarrel;

(5) the facts of the case disclosed that the three accused had attempted to escape after the offence was committed;

(6) the fact that the three accused persons were first offenders is not a powerful factor citing *Public Prosecutor v Leo Say & Ors* [1985] CLJ (Rep) 683;

(7) the age of the three accused persons is not a mitigating factor as they were all adults;

(8) the sentencing trend of the courts for similar offences being 12-15 years citing *Vinaga Moorthy Gopal v Public Prosecutor* [2003] 1 CLJ 758, *Public Prosecutor v Nasir Malik* [1995] 1 LNS 196; *Ralon Banas v Public Prosecutor* [2000] 3 CLJ 310; *Chandra Sekaran a/l Ramiyah & Anor v Public Prosecutor* [2000] 3 MLJ 649 and *Christopher Khoo Ewe Cheng v Public Prosecutor* [1998] 3 MLJ 881 and *Public Prosecutor v Thomas Tampang & Anor* MT Sibu 47–1–2003 (unreported); and

(9) that if the first and third accused were innocent they should at least try to stop the second accused from stabbing the deceased instead of not doing anything but tried to escape together which showed that they participated in committing the offence.

[17] After giving due consideration to the respective submissions of the learned DPP and each of the learned assigned counsel, the court's findings and evaluation are as follows:

[18] I am mindful of the guiding principles governing sentencing underscored in the various cases cited before the court.

[19] In this case, a life undoubtedly is lost and it indeed is unfortunate how the death came about. What would be the appropriate sentence to mete out to the accused persons having regard to the facts and circumstances of the case?

[20] What have been stated in the facts of the case in para 3 that police investigation revealed that the three accused persons arrived in Kuching from Pontianak on 1 October 2001 at about 9am and later checked in at Supreme Hotel into Room 709 which was registered under the first accused name is consistent with the version given by all the three accused persons that they did not know each other prior to the incident and only met each other and befriended each other whilst in the bus from Pontianak to Kuching. All three of them were looking for a job of which the first accused had a brother-in-law, a local Iban running a sawmill in Bintulu and the third accused was told that there was a likelihood that the first accused's brother-in-law could get

A him a job. It is also averred in Facts of case that at the meeting between deceased and two other men Dol and Juare and the three accused 'Suddenly the situation got heated between them and the second accused kicked Juare.' Hence, I would agree with Mr Tai and Mr Bexter that such facts rules out any element of premeditation on the part of the Accused persons.

B

[21] Based on the post mortem report, it is stated that the cause of death of the deceased is the two stab wounds penetrating the heart and the lung. Tomy mind, the facts of these case is distinguishable from *Leo Say* where the original charge against the three accused persons under the Firearms (Increased Penalties) Act 1971 was later amended to one under s 304 of the Penal Code and a firearm was discharged in an attempt to commit robbery causing the victim to succumb to the multiple gunshot wounds in his face and abdomen. The facts of the case also showed premeditation from the time when one of the accused, Krishamoorthy, the police officer conceived the idea of robbing the Kandang estate payroll till the execution of the despicable act of shooting the victim, the manager of Kandang Estate.

C

D

[22] In the present case, from the facts of the case, it cannot be denied that the second accused was the person who kicked and stabbed the deceased. I take cognisance of the fact that s 34 of the Penal Code operates and that is why the first and third accused are equally culpable but in reality, they did not physically do anything save to be present together with the second accused when the unfortunate incident happened. In *Abdullah Ang*'s case, the Supreme Court held:

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> A sentencer must give sufficient discount for all extenuating circumstances pertaining to the degree of culpability or criminality involved, which must necessarily vary from case to case apart from other mitigating factors. Unless there is a proper reason for withholding such credits, failure to do so may result in the sentence not exercising his or her discretion judicially in assessing the level of custodial sentence .

G **[23]** A similar approach was adopted in *Ravindran*'s case and *Pujiono*'s case. Therefore, it would be justified in the circumstances of the case for me to consider the degree of culpability of the accused persons.

[24] The three accused persons have pleaded guilty to the alternative charge saving much judicial time and expenses which would have to be incurred if a trial had proceeded and credit should be given to this factor following *Abdullah Ang*'s case.

H

[25] With regard to the sentencing trend with respect to similar offences under s 304(1)(a) of the Penal Code, I opt to consider the trend reflected in the more recent Malaysian cases cited by the learned DPP subject to the facts of this instant case which are distinguishable as the killing in the cases cited by the learned DPP are either senseless or gruesome acts.

I

[26] Mr Tai disagreed with regard to the submission of the learned DPP that the fact that the three accused persons tried to escape showed that they were guilty of the offence on the ground that there are more than ample authorities to show that the act of absconding should not taken against an accused person even in a murder trial. Unfortunately, the learned counsel did not provide the court with any authority despite being directed to do so. Inthis regard, the court refers to the case *Public Prosecutor v Reza Mohd Shah bin Ahmad Shah* [2002] 4 MLJ 13, a case relating to drug trafficking. His Lordship, Augustine Paul J (as he then was) stated there are many circumstances from which knowledge can be inferred and such an instance is the inference to be drawn from the act of a person in absconding or fleeing from the scene of a crime. In the course of his judgment at p 20, he referred to the case of *Public Prosecutor v Chia Leong Foo* [2000] 6 MLJ 705 at pp 721–722 (decided by his Lordship) as follows:

> A typical example of such conduct is the *absconding* or flight of a person after the commission of an offence. But evidence of mere *absconding* or flight is not such a vital circumstance which can be considered to show that the absconder was having any guilty mind (see *Bhagat Bahadur v State* (1996) Cri LJ 2201). Such conduct must be considered in the totality of the evidence adduced (see *Mansor bin Mohd Rashid's* case). *For it to be capable of amounting to an admission of guilt there must be a nexus between his conduct, his flight and the offence in question***.** (Emphasis added.)

[27] Bearing in mind that the facts of the case showed that when the two policemen arrived at the 7th floor of the Supreme Hotel and saw the three accused persons in front of the lift door behaving in a suspicious manner and thereafter the three accused persons attempted to escape, the court is of the view that the conduct of the three accused persons in absconding soon after the commission of the offence cannot be construed as a factor in their favour.

[28] Whilst not denying that the public interest factor should not be neglected, having due to regard to the other mitigating factors pleaded on behalf of each of the accused persons, I sentence the second accused to 11 years imprisonment and first and third accused to 10 years imprisonment each and all the sentences are effective from the date of arrest.

[29] Exhibit 'H' is to be returned to the prosecution for disposal in the event there is no appeal.

The first, second and third accused persons sentenced to 10 years, 11 years and 10 years imprisonment respectively.

Reported by AG Kalidas